

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 85-0489-RGS

UNITED STATES OF AMERICA,

v.

METROPOLITAN DISTRICT COMMISSION, et al.

CIVIL ACTION NO. 83-1614-RGS

CONSERVATION LAW FOUNDATION  
OF NEW ENGLAND, INC.

v.

METROPOLITAN DISTRICT COMMISSION

SCHEDULE SEVEN  
COMPLIANCE ORDER NUMBER 232

July 1, 2014

STEARNS, D.J.

This is the two hundred and thirty-second Compliance Order that has issued in this litigation. On June 16, 2014, the Massachusetts Water Resources Authority (MWRA) filed its Quarterly Compliance and Progress Report. The United States filed a response, as did the Conservation Law Foundation by way of a letter to the court

supporting the position of the United States regarding delays in completing the investigation of soil and groundwater conditions along Concord Lane in Cambridge.

## **SCHEDULE SEVEN**

### **Activities Completed**

#### **Annual Combined Sewer Overflow Report**

On March 14, 2014, the MWRA submitted its 2013 annual Combined Sewer Overflow (CSO) Progress Report, in compliance with Schedule Seven. In its April 2, 2014 Compliance Order Number 231, the court praised the Report as required reading for anyone interested in a full appreciation of the progress and accomplishments of the long-term CSO control plan.

### **Progress Report**

#### **Combined Sewer Overflow Program**

1. Control Gate and Floatables Control at Outfall MWRO03 and Rindge Avenue Siphon Relief

The MWRA reports that on May 27, 2014, it advertised the estimated \$1.8 million construction contract for this project, marking the last bid advertisement for construction related to the long-term CSO control plan. This is also the last of the six Alewife Brook CSO control projects to enter the construction phase. The MWR003

project will upgrade the overflow hydraulic capacity at Outfall MWR003 and increase the hydraulic capacity of the Rindge Avenue siphon, which delivers overflows to Outfall MWR003. By replacing the existing 30-inch siphon with a 48-inch siphon and replacing the static overflow weir with an automated weir gate that will drop when metered flow levels approach critical levels, the MWR003 project will be able to absorb the burden on the system caused by upstream flooding in extreme storms. The resulting increase in overflow capacity will compensate for the planned closing of Outfall CAM004, once the CAM004 sewer separation project is completed in December of 2015.

The MWRA reports that it has received the appropriate access and construction permits and licenses from the Massachusetts Department of Conservation and Recreation (DCR), the Cambridge Conservation Commission (CCC), and the Massachusetts Bay Transportation Authority (MBTA) to complete the MWR003 project. The MWRA is also in fruitful discussions with the owner of a small private parcel for a license to permit the passage of the construction equipment that will be required to remove a portion of an abandoned sewer line under Alewife Brook.

As previously noted, the City of Cambridge has concerns about the MWR003 project's potential impact on the level of wastewater service for the area. The MWRA and Cambridge have performed hydraulic model evaluations and have confirmed that a flap gate could serve to prevent backflow and improve service by lowering sewer flow elevations in the 48-inch interceptor and upstream local sewers without compromising CSO control or service to other communities. The MWRA reports that while Cambridge has requested that the MWR003 construction documents include the flap gate, the MWRA remains of the view that the flap gate should be installed only after all components of the long-term CSO control plan for Alewife Brook are complete. The MWRA believes that installation of the flap gate prior to completion of the CAM004 sewer separation project could cause adverse hydraulic impacts to the Cambridge system. The MWRA reports that it will work with the City of Cambridge to develop an alternative plan and schedule for the eventual installation of the flap gate at the appropriate point during construction.

## 2. CAM004 Sewer Separation

The MWRA reports that the City of Cambridge continues to make substantial progress on the CAM004 sewer separation project. The \$17 million Contract 8A, which involves the separation of combined sewers in the area east of Fresh Pond Parkway, is now substantially complete. Surface restoration work will continue through December of 2015, in conformity with Schedule Seven.

The MWRA also reports that the \$30 million Contract 8B, which involves the separation of combined sewers in an 83-acre area between Concord Avenue and Brattle Street, is now approximately 20 percent complete, with surface restoration work scheduled for completion in December of 2016. The \$24.2 million Contract 9, which includes the installation of new sanitary sewers and storm drains in Concord Avenue (and intersecting streets) in order to separate combined sewers in a 60-acre area from Fresh Pond Parkway to the intersection of Concord and Huron Avenues, is now 18 percent complete, with surface restoration work scheduled for completion in August of 2016. The court is aware of public frustration with the traffic delays caused by the separation project and the City's simultaneous upgrade of all utilities, streets, and sidewalks in the area. Notwithstanding, the court finds the decision a

commendable one as, in the long run, the upgrades will be of enormous benefit to City of Cambridge residents. The court notes the efforts of the City and the contractors to work with utilities and others to minimize disruption to the fullest extent possible.

The MWRA reports that it continues to be concerned about the limited landfill space presently available for soil disposal related to the CAM004 work. However, it is optimistic that the recent opening of two landfills in the Commonwealth, along with a planned third landfill, ultimately will accommodate the excavations.

### 3. Concord Lane Delays

The MWRA reports that the issues related to improvements along Concord Lane in Cambridge remain unresolved. As previously reported, Cambridge was initially denied access to sites on this private way (which runs behind the Fresh Pond Mall and serves various commercial properties) to perform the surveys, utility and building investigations, and soil and groundwater testing necessary to begin work on storm drain upgrades and sewer separation. In February of 2014, Cambridge secured a limited Right of Entry from the owners of the commercial property affected, allowing the City to

conduct limited investigations, including surface and utility surveys and internal building services inspections.

The MWRA reports that Cambridge's efforts to secure a second Right of Entry to allow engineering consultants to perform soil borings, install groundwater observation wells, and analyze soil and groundwater conditions, have been less successful. This situation potentially jeopardizes the MWRA's ability to meet the court-imposed deadline for completion of the work by December of 2015. At the City's request, the MWRA wrote to the property owners on May 15, 2014, explaining the court-mandated schedule and advising them of the MWRA's intention to either employ its statutory powers of entry or to seek relief from the court. Since then, the owners and the City have met and exchanged drafts of a second Right of Entry. The MWRA reports that a tentative agreement has been reached that will allow Cambridge (1) immediate access to conduct geotechnical investigations, and (2) later access for a contamination testing program that conforms to and supports the final design layout.

The MWRA is appropriately concerned, as is the United States, that the necessary geotechnical work begin by August of 2014 in order to comply with the court's schedule. The MWRA indicates that while

it sees no immediate need for court intervention, it will closely monitor the ongoing negotiations and is prepared to exercise its statutory right-of-entry if necessary.

#### 4. Reserved Channel Sewer Separation

The MWRA reports that the Boston Water and Sewer Commission (BWSC) continues to make progress on the remaining contracts that comprise the Reserved Channel sewer separation project. The two remaining sewer separation contracts – the \$11.6 million Contract 3B is now approximately 90 percent complete, and the \$11.8 million Contract 4 is approximately 75 percent complete – are well within the mandated schedule. The MWRA notes that Contract 3B will be completed by the end of 2014, while Contract 4 remains on schedule for completion in August of 2015.

The MWRA additionally reports that the \$6.8 million Contract 8 (for pavement restoration following sewer separation-related construction) remains approximately 35 percent complete following the winter shutdown; that BWSC began construction on Contract 5 (for cleaning and lining of existing sewers) in May of 2014; and that BWSC awarded Contract 6 (for downspout disconnections) in January of 2014. According to the MWRA, all work for the Reserved



Channel Sewer Separation project remains on track for completion by December of 2015, in compliance with Schedule Seven.<sup>1</sup>

### **Response by the United States**

On June 24, 2014, the United States filed a response, noting its concern that prolonged negotiations between Cambridge and the Concord Lane owners could threaten compliance with Schedule Seven. The United States notified the MWRA by letter that it is prepared to seek court intervention to avoid a violation of Schedule Seven, and requested that a copy of its letter submission be provided to the City of Cambridge and to the Concord Lane property owners.

### **Comments**

While the court is pleased with the continued progress on nearly all fronts, it shares the concerns of the MWRA and the United States about the delays caused by the extended Concord Lane negotiations. While the court is sensitive to the interests of the owners of the affected properties, it must also weigh the public

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<sup>1</sup> As previously noted, BWSC has requested the MWRA's approval to expand the sewer separation infrastructure into certain streets within the Reserved Channel sewer separation area, in order to increase inflow removal. In addition, BWSC has identified additional work necessary within the scope of the original contract. On May 14, 2014, the MWRA approved the corresponding increase in expenditures.

interest in seeing this project to a successful completion. As the MWRA Advisory Board notes in its FY 2015 Integrated Comments and Recommendations (issued in May of 2014), spending on the CSO program has nearly doubled from the amount budgeted this time last year, principally because of the increase in the costs incurred by the Cambridge/Alewife Brook project. Otherwise, avoidable delay will only compound the cost problem. While the court anticipates a private resolution by the owners and the City of Cambridge well before August, when the geotechnical work must begin, it is prepared to entertain requests for relief from the MWRA and the United States to ensure compliance with Schedule Seven.

#### ORDER

The parties are ordered to report to the court as previously scheduled. The court further requests that the MWRA provide a copy of the submission of the United States together with the court's comments in this Compliance Order to the City of Cambridge and the Concord Lane property owners. The court further directs the MWRA to inform it of the status of the parties' Right of Entry negotiations on or before July 18, 2014.

**SO ORDERED.**

**/s/ Richard G. Stearns**

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**UNITED STATES DISTRICT JUDGE**